

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

KEICY CHUNG,

Plaintiff,

vs.

VISTANA VACATION OWNERSHIP, INC.

AND

STARWOOD HOTELS & RESORTS
WORLDWIDE, LLC,

Defendants.

CIVIL NO. 18-00469 LEK-RT

FINDINGS AND RECOMMENDATION
TO DENY PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT

**FINDINGS AND RECOMMENDATION TO
DENY PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

On January 3, 2019, Plaintiff Keicy Chung filed a Motion for Default Judgment. Defendants Vistana Vacation Ownership, Inc. and Starwood Hotels & Resorts Worldwide, LLC ("Defendants") filed Defendants' Opposition to Motion for Default Judgment on January 17, 2019. The Court elects to decide this matter without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the U.S. District Court for the District of Hawaii. After carefully considering the Motion, Opposition and the applicable law, the Court hereby RECOMMENDS that the Plaintiff's Motion be DENIED.

Plaintiff requests for a default judgment against Defendants for failure to timely serve their Answer. Defendants claim that Plaintiff's request is procedurally improper and the requirements for default judgment are not satisfied.

Plaintiff's request is premature. An entry of default must precede a motion for default judgment. Brooks v. U.S., 29 F. Supp. 2d 613, 618 (N.D. Cal. 1997), aff'd, 162 F.3d 1167 (9th Cir. 1998) ("The entry of default judgment is a two-part process; default judgment may be entered only upon the entry of default by the Clerk of the Court"). See Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default").

Plaintiff has not requested an entry of default, and default has not been entered. Accordingly, the Court recommends that the Motion be denied.

IT IS SO FOUND AND RECOMMENDED.

DATED: January 24, 2019 at Honolulu, Hawai'i.



/s/ Rom A. Trader
Rom A. Trader
United States Magistrate Judge

Keicy Chung v. Vistana Vacation Ownership, Inc., and Starwood Hotels & Resorts Worldwide, LLC, CIV. NO. 18-00469 LEK, Findings and Recommendation to Deny Plaintiff's Motion For Default Judgment